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CURRENT TOPICS

The Legal Aid and Advice Act, 1949 (Commencement) Order, 1950

As we go to press the Legal Aid and Advice Act, 1949 (Commencement) Order, 1950 (S.I. 1950 No. 1357) is issued. It appoints 2nd October next as the date when the following provisions of the Act shall come into force: (*a*) ss. 1–6 (except s. 5) and Scheds. I, II and III, for the purpose only of making legal aid available in proceedings in and commencing in the Supreme Court; (*b*) ss. 12, 14–16 and 17 (1)–(4) in so far as they relate to legal aid in the above proceedings; and (*c*) s. 17 (5) and (6). These provisions relate respectively to the scope and general conditions of legal aid in proceedings (s. 1 and Sched. I), financial conditions (s. 2), contributions from assisted persons and charges on property recovered (s. 3), assessment of resources (s. 4 and Sched. II), solicitors and counsel (s. 6 and Sched. III), regulations (s. 12), secrecy (s. 14), proceedings for misrepresentation, etc. (s. 15), adaptation of rights to indemnity (s. 16) and interpretation, commencement and transitional provisions (s. 17).

Legal Aid Regulations

Two other Statutory Instruments made by the Lord Chancellor under the Legal Aid and Advice Act, 1949, are to hand as we go to press. They are the Legal Aid (General) Regulations, 1950 (S.I. 1950 No. 1359) and the Legal Aid (Assessment of Resources) Regulations, 1950 (S.I. 1950 No. 1358), both of which are to come into operation on 2nd October next. The General Regulations provide by regs. 2–13 for applications for legal aid and matters resulting therefrom, by regs. 14–19 for the conduct of aided proceedings and the recovery of money for the benefit of the Legal Aid Fund, and by reg. 20 transitional provisions dealing with the poor persons procedure under Rules of the Supreme Court which are repealed by the Act. There is a schedule of fees to counsel and an appendix of forms. The Assessment of Resources Regulations, made under s. 4 of the Act, set out the general principles to be followed in computing the gross income and capital of an applicant and the allowances and deductions to be made therefrom so as to ascertain the amount of his disposable income and disposable capital. It is hoped to deal more fully with both the Commencement Order and the regulations in the next issue of The Solicitors' Journal.

Income-Tax Treatment of Pension and Retirement Provision

In accordance with the announcement made by the Chancellor of the Exchequer in his Budget speech, a new committee has been appointed to review the income tax treatment of superannuation and pension schemes and of contributions made under such schemes. The committee is also to consider, *inter alia*, whether further income tax relief should be given for other kinds of payments which people may make during their lives to provide for their retirement or old age and for their dependants after death. The committee is to pay special attention to the position of self-employed persons and of others who are not subject to any

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pensions scheme. The members of the committee are: Mr. J. MILLARD TUCKER, K.C. (chairman); Mr. W. S. CARRINGTON, member of the council of the Institute of Chartered Accountants; Sir JOHN J. CATER, former Chief Inspector of Taxes; Mr. H. WESTON HOWARD, chairman of Hayward-Tyler and Co., Ltd.; Mr. GEORGE WOODCOCK, assistant general secretary of the Trades Union Congress; and Mr. R. C. SIMMONDS, past president of the Institute of Actuaries.

Rent Tribunals

FROM some of the recent contributions to the controversy in the Press and elsewhere on the work of rent tribunals, those who know nothing but what they read might imagine that it is performed with consistent inefficiency. Many who have seen the tribunals at work will prefer to range themselves with counsel for the applicants in a recent case before the North London Tribunal, in which he was reported as saying (*The Times*, 5th August) that the tribunals were doing an admirable service in the country. The application concerned luxury flats, and to counsel's argument that the Act was never intended to apply to such flats, the chairman (Mr. A. BOARD) said: "It is quite clear that the Act of 1946 does apply to these flats. We must reject any suggestion that a well-to-do man is a mean person when he seeks the remedy provided by law to redress his grievances. We have not to apply a means test to ascertain what rent a tenant can reasonably pay but to determine a reasonable rent for the premises in all the circumstances." He added: "In all questions of law or the proper conduct of the proceedings there is ample opportunity to appeal." While granting that rent tribunals are at least as efficient as magistrates and are probably the best tribunals for determining the questions of fact which are before them, practitioners can hardly agree that there is the same opportunity for appeal as there is from the magistrates' courts, or even that the opportunity is ample. That is the crux of the problem, the solution of which is probably to enact a right of appeal, in law, to the Court of Appeal.

The Law and the Festival

POSSIBLY the most ardent planners in the country to-day are those enthusiastic spirits whose task it is to prepare the details of the great At Home next year, when we shall all be playing host. A glance at a brochure issued by the Festival of Britain office shows that legal matters will not be entirely neglected in the South Bank Exhibition, for the pavilion provisionally entitled "Character and Tradition" is to illustrate, *inter alia*, "the fight for religious and civil freedom, and for justice," though, understandably enough, the council remark that there are many aspects of national character and tradition which cannot be displayed in exhibition form. But the festival is not only an affair of exhibitions. "The whole of Britain will be on show during the festival." Since we are irrevocably committed to the festival, can we not make a point of showing our visitors, alongside the salient features of our cultural and industrial way of life, the British system of justice at work? No doubt a certain proportion of those who come to these shores next year will of their own volition take the opportunity of seeing the functioning of our courts, by attending as members of the public. Would it be out of the question to encourage small select parties of our guests, under proper organisation and guidance, to visit the courts and hear a whole case through in order that they may see for themselves an example of our method of doing justice between man and man? We have never yet met a disinterested layman who has had occasion to sit in one of our superior courts for any length of time who did not remark upon the judge's impartiality and fairness. There is little doubt that a similar impression would be made upon those whose countries have, perhaps, the same broad ideals but very different methods in legal matters, and that international understanding would thereby be furthered.

Bankruptcy Statistics

THE annual return of the Board of Trade relating to bankruptcies in England and Wales has not been issued since before the war, but a special correspondent of *The Times* has published figures (*The Times*, 8th August) from which it is apparent that the small number of bankruptcies which occurred during the war years has been increased since the war and is gradually climbing back to its pre-war level. In 1935 there were 3,523 bankruptcies; by 1939 this figure had fallen to 2,638. In 1946 the total was 323, in 1947, 626, in 1948, 1,132, and in 1949, 1,491. For the first half of 1950 the provisional figure is 921. In 1935, 310 builders failed, in 1937, 316 and in 1939, 215. In 1947 there were only 78 failures among the builders, but the figure for the first half of 1950 is 105. Among publicans and hotel keepers there were only two bankruptcies in 1946, but there have been 22 for the first six months of this year. In 1939 they totalled 60. Farmers and graziers, more prosperous than they were, numbered among them for the years 1946 to 1949, 17, 26, 33 and 37 bankrupts respectively. The provisional figure for the first half of 1950 is 36, but some of these may be income tax petitions which will sooner or later be met. Solicitors are not immune, the figure for 1950 so far being seven. The only other figure given for solicitors, that for 1935, is 14. The increase in compulsory liquidations has far outrun bankruptcies, the figure of 413 for 1949 being considered a record. In 1938 there were 376, and the figures for 1946 to 1948 were 82, 165 and 359 respectively.

Causes of Rise in Insolvency Figures

THE general conclusions drawn by *The Times* correspondent from the available figures are that (1) builders are the most vulnerable of small business men; (2) those who fail rarely explain their deficiency as due to causes beyond their own control or judgment, but usually ascribe it to starting with too little capital or to some unpredictable expense or mischance, such as illness; (3) there is a general tendency to continue in business, hoping for a change for the better long after it has become plain that 20s. in the £ can no longer be paid; (4) with companies, as with persons, the commonest cause of disaster is insufficient capital, and the over-optimistic forecast of overhead costs. One of the causes of the rise which is not dealt with in the otherwise excellent *Times* article is the removal of so many controls, restoring to those who wish the risk of failure as well as the opportunity to succeed. So long as profit remains a reward for the most skilful and knowledgeable risk takers, for so long will bankruptcy remain one of the methods by which the inefficient may be weeded out. Of course, the element of mischance cannot be ruled out, even where no certificate of misfortune is granted, and one hostile creditor in a trade like the building trade, for example, where long credit is not uncommon, can bring about a trader's downfall. Practitioners who appear in the bankruptcy courts, particularly on applications for discharge, can testify to the frequency of the bankruptcy offences of failure to keep proper books of account and unjustifiable extravagance among debtors even after they know of their insolvency. From this, it is submitted, the general conclusion can be drawn that the bankruptcy courts perform a highly useful function in a free economy.

TOWN AND COUNTRY PLANNING

USE CLASSES AND DEVELOPMENT CHARGE EXEMPTIONS

THE Town and Country Planning (Use Classes) Order, 1950, S.I. 1950 No. 1131, and the Town and Country Planning (Development Charge Exemptions) Regulations, 1950, S.I. 1950 No. 1233, are the products of Mr. Dalton's experiments in freedom and supersede the corresponding order and regulations of 1948, S.I. 1948 No. 954 (see 92 SOL. J. 277), and S.I. 1948 No. 1188 (see 92 SOL. J. 329 and 342). The greater part of the new instruments is the same as the old, with which readers are already acquainted, and it is only proposed in this article to note the differences between the two.

THE USE CLASSES ORDER

The Use Classes Order is made by the Minister of Town and Country Planning under s. 12 (2) (*f*) of the Town and Country Planning Act, 1947, and the effect of the order is that the use of buildings or land, which are used for a purpose of any class specified in the order, for any other purpose in that class, does not constitute development, and consequently involves neither the obtaining of planning permission nor the payment of development charge. The differences between the old and the new orders consist of certain alterations in (A) the definitions in art. 2 (2) of the old order, and (B) the alteration of certain classes in the schedule to the old order. The definitions of "the appointed day," "light refreshments," "building," "wholesale warehouse" and "repository" do not appear at all in the new order.

There are very important alterations in the definition of "shop" which will be best seen by setting out the wording of the old order and the alterations. The words in italics appear in the old definition but not in the new, while the words in square brackets are new.

"Shop" means a building used for the carrying on of any retail trade or retail business wherein the primary purpose is the selling of goods (*excluding refreshments other than light refreshments*) by retail, and *without prejudice to the generality of the foregoing* includes a building used for the purposes of a hairdresser, undertaker [or] ticket agency or *receiving office for* [for the reception of] goods to be washed, cleaned or repaired, or for [any] other purposes appropriate to a shopping area, but does not include a building used as *an amusement arcade, pin table saloon* [a] funfair, garage, petrol-filling station [office or] hotel or premises [(other than a restaurant)] licensed for the sale of intoxicating liquors for consumption on the premises.

Two important results flow from the new definition.

First, an ordinary retail shop can now be used as a full café or restaurant, with cooking on the premises and licensed for the sale of intoxicants, without having to obtain planning permission or to pay development charge. The same change can, of course, be made in the reverse direction.

Second, an office is now expressly excluded from the definition. Readers may remember that in an article at 94 SOL. J. 138 it was argued that an office might in many circumstances fall within the old definition of shop, so that a change from "shop" to "office" did not constitute development. The express exclusion in the new definition of an office seems to confirm that this argument was open on the old definition. Now, however, it is clear that a change from shop to office or office to shop will require planning permission, but it is comforting to find that the new Exemptions Regulations exempt the change from payment of development charge.

A new definition is included in the new order as follows:—

"Funfair" includes an amusement arcade or pin-table saloon.

The definition of "office" is slightly altered and now reads:—

"Office" includes a bank [but does not include a post-office].

So much for alteration in definitions. The alterations to the Use Classes in the schedule do not affect the first nine classes at all; these relate to shops, offices, and light, general and special industrial buildings. Most of the remaining classes have, however, been much altered, principally by amalgamation. In order that readers used to the old order may easily see the alterations, these remaining classes are set out as in the old order with the words omitted in the new order in italics and the words added by the new order in square brackets. The new numbering of the classes is also apparent.

Class X.—Use as a wholesale warehouse [or repository] for any purpose *except storage of offensive or dangerous goods.*

Class XI.—Use as a repository for any purpose except storage of offensive or dangerous goods.

Class *XII* [XIII].—Use as a building for public worship or religious instruction or for the social or recreational activities of the religious body using the building.

Class *XIII* [XII].—Use as a residential or boarding school [or] a residential college, *an orphanage or a home or institution providing for the boarding, care and maintenance of children (other than a hospital, home, hostel, or institution included in Class XVII or Class XVIII).*

Class *XIV* [XI].—Use as a boarding or guest house, a residential club, *a hostel* or a hotel providing sleeping accommodation.

Class XV.—Use (other than for persons of unsound mind, mental defectives or epileptic persons) as a convalescent home, a nursing home, a sanatorium or a hospital.

Class *XVI* [XV].—Use (other than residentially) as a health centre, a school treatment centre, a clinic, a creche, a day nursery or a dispensary, or use as a consulting room or surgery unattached to the residence of the consultant or practitioner.

Class *XVII* [XVI].—Use as a hospital, home or institution for persons of unsound mind, mental defectives, or epileptic persons [*or*].

Class XVIII.—Use as a home, hostel or institution in which persons may be detained by order of a court or which is approved by one of His Majesty's Principal Secretaries of State for persons required to reside there as a condition of a probation or a supervision order.

Class *XIX* [XVIII].—Use as a theatre, a cinema, *or* a music hall, [a dance hall, a skating rink, a swimming bath, a Turkish or other vapour or foam bath or a gymnasium, or for indoor games].

Class *XX* [XVII].—Use as an art gallery (other than for business purposes), a museum, a public library or *a public* reading room, [a public hall, a concert hall, an exhibition hall, a social centre, a community centre or a non-residential club].

Class XXI.—Use as a dance hall, a skating rink, a swimming bath, a Turkish or other vapour or foam bath or a gymnasium, or for indoor games.

Class XXII.—Use as a public hall, a concert hall, an exhibition hall, a social centre, a community centre or a non-residential club.

[Class XIV.—Use as a home or institution providing for the boarding, care and maintenance of children, old people or persons under disability, a convalescent home, a nursing home, a sanatorium or a hospital (other than a hospital, home, hostel or institution included in Class XVI).]

It will be seen that the old Classes X and XI have been amalgamated with the exception of offensive and dangerous goods omitted; that the old Class XIII has been somewhat reduced, the purposes taken away being included with the old Class XV in a new Class XIV; and that the following old classes have been amalgamated:—

XVII with XVIII.
XIX with XXI.
XX with XXII.

It is permissible as before for a planning authority in granting permission for the use of property for a particular purpose to exclude by condition its use for any other purpose in the same class.

It only remains to point out that the Town and Country Planning (Use Classes for Third Schedule Purposes) Order, 1948, S.I. 1948 No. 955 (see 92 SOL. J. 277), has not been revoked or in any way altered, and indeed cannot be except by Act of Parliament. Therefore the additional freedom given by the new Use Classes Order should not result in any increase or decrease in the assessment of compensation for compulsory purchase or of the restricted value of land in connection with claims for depreciation against the £300,000,000 fund. On the other hand it may result in an increased development charge, e.g., a planning permission for the use of a building as a skating rink will now, unless expressly excluded by condition, carry with it the right to use the building as a cinema, and may in certain circumstances be more valuable.

The difference which now exists between the Use Classes Order under s. 12 (2) (*f*) and the Third Schedule Use Classes Order may result in a local planning authority having to pay compensation under s. 20 of the Act in certain circumstances where planning permission is required under the new s. 12 Order which would not be required under the terms of the Third Schedule Order. Thus, under Class XIII of the 1948 s. 12 Use Classes Order, a children's home could be used as a boarding school without permission. In the new order a children's home is in Class XIV and a boarding school is in Class XIII and planning permission will be required, assuming that irrespective of the order this is a *material* change of use. If the planning authority refuse permission and are upheld by the Minister on appeal they may be liable for payment of compensation under s. 20.

THE DEVELOPMENT CHARGE EXEMPTIONS REGULATIONS

The Development Charge Exemptions Regulations were approved by resolution of the Commons on 24th July, 1950, and by the Lords on 25th July, 1950, in accordance with s. 69 (5) of the Town and Country Planning Act, 1947. The Minister announced in the House of Commons on 13th June that certain of the new exemptions from charge would operate as from 14th June in anticipation of the making of the regulations.

Such a great amount of rearrangement has taken place in preparing the new regulations that it is not readily possible to compare the details of the old with the new. Suffice it to say that the new regulations do not take away any exemptions granted by the old, and if the reader peruses the new with diligence he will find in one place or another the old exemptions. It is, therefore, only necessary to say what additional exemptions have been conferred. It may perhaps be mentioned in passing that the schedule to the new regulations is not divided into classes, as in the case of the old, but simply into numbered paragraphs; this may avoid confusion with the schedules to the General Development Order and the Use Classes Orders, which are also divided into classes, but the result is not to the writer's mind quite so clear.

The first additional exemption relates to the rebuilding, enlargement, improvement or alteration of dwelling-houses.

Paragraph 1 in Pt. I, and para. 3 in Pt. II, of Sched. III to the Act permitted the rebuilding and the enlargement, improvement or alteration respectively of any building in existence on 1st July, 1948, or in existence before then if destroyed or demolished since 7th January, 1937, so long as the entire content of the original building was not exceeded, in the case of a dwelling-house, by more than one-tenth or 1,750 cubic feet, whichever is the greater, and in any other case by more than one-tenth. Class I of the 1948 Regulations extended this concession to buildings which were first put up after the 1st July, 1948.

Paragraph 1 of the schedule to the new regulations is split into four sub-paragraphs. Sub-paragraph (1) increases the tolerance on rebuilding a pre-1st July, 1948, dwelling-house from one-tenth or 1,750 cubic feet to one-tenth or 7,500 cubic feet, whichever is the greater. Sub-paragraph (2) similarly increases the tolerance on the enlargement, improvement or alteration of a pre-1st July, 1948, dwelling-house. Sub-paragraphs (3) and (4) similarly increase the tolerance for rebuilding and for the enlargement, improvement or alteration respectively of a post-1st July, 1948, dwelling-house.

The second additional exemption is contained in para. 2 of the schedule to the new regulations, which is headed: "The conversion of houses into separate dwelling-houses." It will be remembered that para. 2 in Pt. I of the schedule to the Act already exempts from charge the use as two or more separate dwelling-houses of any building which on 1st July, 1948, was used as a single dwelling-house and, further, that the Minister of Town and Country Planning has recently been advised that knocking a hole in a party wall between two buildings without materially affecting the external appearance of the buildings does not constitute development. The exemption conferred by the regulations is, therefore, not quite so extensive as might be imagined. However, the regulations exempt, under this heading, "The use as any number of separate dwelling-houses of not more than three adjacent buildings, each of which was originally erected as a single dwelling-house. . . ." Each building must also have been used for residential purposes on the 1st July, 1948, or, if then requisitioned or destroyed or demolished since 7th January, 1937, must have been last so used. The effect of this is to exempt the lateral conversion into flats of the various floors of not more than three terrace dwelling-houses.

The third additional exemption is contained in para. 3 of the schedule to the new regulations and consists of an extension of the types of changes of use which are free of charge. These are:—

(1) The use as a shop of any part of a dwelling-house, the part not to have an aggregate floor space exceeding 200 square feet, provided that the shop use is combined with the residential use of the dwelling-house.

(2) The use of a dwelling-house which was in existence on 1st July, 1948, for any of the purposes included in Classes XIII, XIV, XV, XVI and XVII of the new Use Classes Order discussed above.

(3) The use of a shop as an office and vice versa.

(4) The use of a building used for one class of special industry mentioned in the new Use Classes Order for any other class of special industry mentioned therein.

(5) The use of a building used for any of the purposes included in Classes XIV, XV, XVI and XVII of the new Use Classes Order for any other of those purposes.

Fourthly, exemption is given to the carrying out of operations and the institutions of uses in accordance with proposals, arrangements or applications approved under Pt. II of the Housing Act, 1949.

Fifthly, the exemption already accorded to the use of any site for the display of advertisements is amended so as to make it clear that operations for the display of advertisements as well as the use of the site are exempt.

Lastly, there is a miscellaneous collection of new or extended exemptions relating to development on dock, harbour, pier, water transport, canal, inland navigation and railway and light railway undertakings by the lessees or licensees of the undertakings, electricity sub-stations not exceeding 2,000 cubic feet, road works and sea and river defence works.

In conclusion, it is as well to mention some things which the regulations, like the old regulations, do not do. In the first place they in no way grant any exemption from the necessity of obtaining planning permission where that is required. Secondly, they do not affect the assessment of compensation for the compulsory purchase of land or of the restricted value of land in connection with claims for depreciation against the £300,000,000 fund, nor does the refusal of planning permission for the development which they exempt render the local planning authority liable for the payment of compensation under s. 20 of the Act. In these connections it is important to bear in mind the differences between the effect of the tolerances allowed by Sched. III to the Act and the Third Schedule Use Classes Order, on the one hand, and that of the tolerances allowed by the Exemptions Regulations on the other.

R. N. D. H.

Costs

DIVORCE—II

We have been considering the position with regard to costs awarded in respect of divorce suits, and we have seen that in the main a co-respondent against whom a charge of adultery has been proved will normally have to pay the costs of the petitioner. Circumstances may arise, however, where the petitioner will have to pay the costs of the co-respondent. Thus, if the petition is dismissed and the events show that the petitioner should never have brought the suit then he may be condemned to pay the co-respondent's costs. This is, however, a very rare circumstance and the only case in point is the old one of *Adams* v. *Adams and Colter* (1867), L.R. 1 P. & D. 333.

Under s. 177 (2) of the Judicature Act, 1925, a wife who is the petitioner may apply to the court to join the woman with whom it is alleged that adultery has been committed as respondent with the husband, and in this case the wife may, if she is successful, obtain an order for costs against the woman named, provided that she asks for such costs in the petition (see Matrimonial Causes Rules, 1947, r. 5). On the other hand, where a woman against whom adultery is alleged intervenes successfully, then she may obtain an order for costs against the wife. In neither case is it necessary to prove a separate estate, having regard to the provisions of the Law Reform (Married Women and Tortfeasors) Act, 1935.

We cannot leave this aspect of the matter without referring to the position which arises where one or other of the parties is proceeding under the Poor Persons Rules. In this case, it will be remembered that it is a well-established rule that costs are awarded by way of indemnity. As Lindley, L.J., observed in the case of *Richardson* v. *Richardson* [1895] P. 346: "The object of ordering a party to pay costs is to indemnify his successful opponent; and why should the successful party get more than he is liable to pay, and so make a profit?" It follows, therefore, as a corollary to this rule that where a poor person is awarded costs then he cannot recover more than he himself would have to pay, that is to say, he cannot in a divorce suit recover more than his out-of-pocket expenses, and these will not include anything in respect of a solicitor's fee, nor a fee to counsel, nor will the out-of-pocket expenses include anything in respect of the solicitor's office expenses (see Ord. XVI, r. 31B). However, by sub-r. (2) the court or judge may order the unsuccessful party to pay profit charges where that party has acted unreasonably in bringing or defending the proceedings, or where the special circumstances of the case require it. The special circumstances mean those in relation to the case and not circumstances special to one of the parties, so that, although the unsuccessful party or the co-respondent may be a person of means, this cannot be regarded as a special circumstance within the meaning of the rule (see *Jackson* v. *Jackson and Barwell* [1936] P. 214). Moreover, where in the view of the court or judge the action is of such a length, or is one of such difficulty as to throw an unusual burden on the solicitor, then the unsuccessful party may be ordered to pay such sum, in addition to the out-of-pocket expenses, as may be deemed fit in respect of such unusual burden. The out-of-pocket expenses will include reasonable and proper payments to witnesses and others, postages and other similar outlays, but will not include court fees nor payments to counsel by way of fees.

On the other hand, where costs are awarded against a person who is proceeding under the Poor Persons Rules then, subject to what is stated hereafter, all that he will have to pay to the successful party is that party's out-of-pocket expenses (see Ord. XVI, r. 28 (1)). Precisely what can be included in the out-of-pocket expenses in this case is a matter for conjecture. It will be recalled that, in the case of a person who has been granted a certificate under the Poor Persons Rules, he is not liable to pay anything in the way of solicitors' fees, counsel's fees or court fees, so that if he is awarded the costs of the suit, then he cannot recover anything in respect of these items. The other party who is not a "poor person," however, will have incurred such disbursements and to him they will represent out-of-pocket expenses. Order XVI, r. 28 (1), provides that "no poor person shall be liable to pay costs to any other party" and this, presumably, means profit costs, but it does not necessarily mean that the poor person is bound to pay only those disbursements which he would himself receive had he been awarded costs.

It will, however, be observed that preceding the words "no poor person shall be liable to pay costs to any other party" quoted above from Ord. XVI, r. 28 (1), there is the significant phrase "unless the court or judge shall otherwise order." These words came up for review in the case of *Olds* v. *Olds* [1948] 2 All E.R. 61, in which case the commissioner had ordered the poor person petitioner, who had been unsuccessful, to pay to the respondent the costs of the proceedings, and intimated at a subsequent application that

this meant the costs of the proceedings on a party and party basis. The petitioner appealed, and although his counsel urged before the Court of Appeal that Ord. XVI must be read as a whole, and that the costs awarded against a poor person were only such costs as he himself could receive, the court found otherwise, with the result that if a person being a poor person is ordered to pay the party and party costs of the successful party then this is a proper exercise of the discretion vested in the court or judge by r. 28 (1). Tucker, L.J., observed in this respect, at p. 63, that " If a poor person is ordered to pay the costs of an ordinary litigant, he is thereby made liable to pay that litigant's taxed costs on the ordinary basis, i.e., there is no foundation for the suggestion that a poor person ordered to pay the costs of an ordinary litigant pays costs taxed on some special or reduced basis, so, for example, as to exclude profit costs and charges." The only occasion when such a result could be achieved is when the successful party is also himself a poor person.

Where one party has been awarded the costs of the suit against another party questions may arise as to precisely what costs are included in the order. As between the petitioner and the respondent, the costs will include those relating to all matters in the prayer of the petition, and so may include the costs of interlocutory applications for access and maintenance. The costs of applications subsequent to the decree will not however be included, and the orders made on such subsequent applications should give directions as to the costs thereof. Moreover, where the co-respondent is condemned in the costs of the suit, and there have been interlocutory applications of a similar nature to those mentioned above, then the costs of such applications will be deemed incidental to the suit and so recoverable against the co-respondent, but the co-respondent must have notice that it is proposed to ask that the costs of the applications shall be awarded against him, and the order made on the application must state that the costs thereof shall be treated as costs in the cause.

In those cases where the petitioner has asked the court to exercise its discretion in his or her favour and is successful in the suit, the costs incurred by reason of the prayer for discretion will not, as a matter of course, be deemed to be part of the costs of the suit and so recoverable against the unsuccessful party. If it is desired that the costs incurred in connection with the prayer for discretion shall be treated as part of the costs of the suit, then the court must be asked especially to include those costs expressly in the order, but it is only in very exceptional cases that the court will accede to this request.

Costs of a divorce suit ordered to be paid by one party to another will be taxed in the Divorce Registry and will be dealt with on a " party and party " basis. The bill will be typed or written on both sides of foolscap paper and sewn down the left-hand edge bookwise. Each page will be cast separately in pencil before the bill is lodged, and there will be a page by page summary at the end of the bill.

The bill of costs should be lodged in the registry as soon as possible after the hearing, and in due time the registrar will send to the solicitor lodging the bill a notice with an appointment to tax. It is then the duty of the solicitor whose bill is being taxed to give notice of the appointment to all other parties liable for the costs. The notice must be given at least three clear days before appointment to tax.

At the time of lodging the bill, or at least two days before the date appointed for the taxation, the solicitor whose bill is to be taxed must leave with the registrar all documents dealt with in the bill, including counsel's brief and the documents accompanying it. Vouchers for all payments included in the bill should also be left, although the disbursements can be vouched after the bill has been taxed.

When the taxation is finished, the items taxed off on each page will be cast and the summary will be completed, the total of the bill being agreed by the solicitors for the parties concerned, who should sign a certificate at the foot of the bill to the effect that the bill has been agreed as taxed at the sum of so much. The taxing fee of 1s. for every £2 and the fee of 5s. for the order to pay will then be paid by impressed stamps and the bill will be left in the registry for the allocatur to be endorsed thereon.

Objections to the taxation may be carried in in the normal way, and after the registrar has replied to such objections any party aggrieved may apply to the judge by way of summons to review the taxation. The summons to the judge must be taken out within fourteen days after the date of the registrar's allocatur. We have already dealt in a former article with the principles upon which the court will proceed on a review of taxation.

J. L. R. R.

A Conveyancer's Diary

EXTRINSIC EVIDENCE AND THE ORIGINAL CONTENTS OF TESTAMENTARY DOCUMENTS

On first impression the decision in *Re Itter* [1950] 1 All E.R. 68, may appear to be nothing more than authority for the admissibility of evidence obtained with the aid of a new scientific device (infra-red photography) for the purpose of ascertaining the original contents of a testamentary document which has been altered after execution; and that, so far as the actual litigation between the parties was concerned, was the effect of the decision. But the decision is much more interesting than that, as an examination of the way in which the case for the plaintiffs was argued and the argument received by the court will show.

The testatrix made a will which was duly executed and attested, and subsequently added a codicil which was also duly executed and attested. The codicil contained a number of pecuniary legacies. Some time after making this codicil the testatrix pasted slips of paper over the amounts of some of the pecuniary legacies for which she had made provision in her codicil, and on each of these slips she wrote the amount of a sum of money and her signature. These alterations were not, therefore, at first sight at any rate, properly signed and attested in accordance with s. 21 of the Wills Act, 1837, and letters of administration with the codicil annexed were granted with the places in the codicil over which the slips had been pasted left blank. The legatees affected thereupon applied for an order, in effect, that the writing which had been obliterated by the pasting over of the slips should be photographed (as the expert evidence indicated could be done) with the aid of infra-red photographic apparatus, and the codicil admitted to probate with that writing restored to it. Ormerod, J., made the order and directed that an expert should be appointed to report on the codicil. The decision on this application will be found reported at [1948] 2 All E.R.

1052, but little emerges from this report which does not appear in greater detail, and in more easily comprehensible form, from the report of the judgment delivered after the full hearing (see [1950] 1 All E.R. 68).

The expert appointed by the court took photographs of the codicil by the use of infra-red rays, and was able to produce a photograph of the parts of the codicil which the testatrix had covered over with the slips of paper. This photograph showed the original amounts of the legacies, and these figures were accepted by both sides, but the question then arose whether the plaintiffs (the legatees affected) were entitled to rely on the evidence of the expert, or whether this evidence was inadmissible.

The plaintiffs put their case in two ways: firstly, they relied on s. 21 of the Wills Act as negativing, in the circumstances of the case, the revocation of the legacies which the testatrix had apparently effected by obliterating the amounts of the legacies as originally appearing in the codicil; and secondly, they prayed in aid the doctrine of dependent relative revocation and claimed that, on the footing that this doctrine applied, the evidence of the infra-red photographs was admissible to fill in the gaps in the codicil caused by the pasting of the slips over the original amounts. The decision of the court was that the plaintiffs' case failed on the first argument, but succeeded on the alternative. But cases may arise in which, in somewhat similar circumstances, the alternative argument based on the doctrine of dependent relative revocation may not be open to the parties affected, and the conclusion that on somewhat similar facts it will always be possible, on the authority of *Re Itter*, to fill in the obliterated gaps in a testamentary document with the aid of this kind of photography may therefore prove dangerously misleading.

Before examining the argument based on s. 21 of the Wills Act, it may be useful to recall briefly the main provisions of the Act dealing with revocation. Section 20 provides that a will or codicil may be revoked by, in effect, another testamentary document expressing an intention to revoke it, or by the document being burned, torn or otherwise destroyed with the intention of revoking the same. Section 21 then provides that no obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of a will before such alteration shall not be apparent, unless such alteration is executed in like manner as is required for the execution of a will. The plaintiffs in *Re Itter* argued that as the writing which had been covered up by the slips had been revealed by the "infra-red" photographs, it was "apparent" for the purpose of s. 21 (with the result, according to that section, that the revocation *prima facie* effected by the obliterations was ineffective). Ormerod, J., rejected this argument on the ground that "apparent" for this purpose means "apparent on the face of the document itself" (*Townley* v. *Watson* (1844), 3 Curt. 761), and it could not be said that the writing which had been obliterated in the codicil in the present case, and which could only be ascertained by the aid of photography, was "apparent" in this sense.

The reason for the restricted meaning attached to the word "apparent" in this context appears from a comparison of the provisions of s. 20 of the Wills Act with those of s. 21. For the purposes of s. 20, the intention to revoke is vital; as was pointed out by Sir Francis Jeune in *Finch* v. *Combe* [1894] P. 191, 198, even a partial destruction of a testamentary document would be effective as a revocation of it if the intention to revoke were clear. But the test of intention is entirely absent from s. 21; whatever the intention behind it, an obliteration is effectual under this section only if the words of the document before obliteration are not apparent, and is ineffectual if those words are apparent. If the words are not apparent, no extrinsic evidence can be admitted to show what they are.

On the other hand, it is well established that extrinsic evidence is admissible to show what was in the document before its alteration or obliteration if the doctrine of dependent relative revocation is applicable to such alteration or obliteration (see, e.g., *In the Goods of Horsford* (1874), L.R. 3 P. & D. 211). In the present case, the inference which Ormerod, J., concluded should be drawn from the action of the testatrix in pasting the slips on to her codicil was that she intended to revoke the part of the bequests which she covered with these slips only if the new bequests which appeared on these slips were effectually substituted therefor; as that had not happened, the new bequests being invalid by reason of failure to comply with the requirements of s. 21 of the Wills Act, the evidence of the photographs taken with the aid of infra-red rays was admissible to show the original amounts of the bequests, and the codicil was ordered to be admitted to probate in the form in which it had originally been executed.

This was enough for the plaintiffs in this particular case, but as has been suggested, it will not always be possible to invoke the doctrine of dependent relative revocation where parts of a testamentary document have been obliterated after its execution by means similar to those used by the testatrix in *Re Itter*. Had the testatrix obliterated the whole of the bequests affected in this case, for example, or merely obliterated the amounts thereof without substituting new bequests, the doctrine would have been inapplicable (see, e.g., *In the Goods of Horsford*, *supra*), and the evidence of the photographs inadmissible. Regarded from this point of view, the decision in *Re Itter* obviously breaks no new ground so far as principle is concerned; but to grasp its limitations, it is essential to distinguish between the two different ways in which the case for the plaintiffs was put, and this can only be done by filling in some historical background to the decision as it is reported.

"A B C"

Landlord and Tenant Notebook

SURRENDER OF CONTROLLED TENANCY

"THERE are, we think, only two ways by which a tenant whose contractual tenancy has come to an end can lose the protection of the Acts. One is, as we have stated, by giving up possession. The other is by an order against the tenant for recovery of possession," said Lord Greene, M.R., in his judgment in *Brown* v. *Draper* [1944] K.B. 309 (C.A.), since applied in *Old Gates Estates, Ltd.* v. *Alexander* (1949), 93 SOL. J. 726, and in *Middleton* v. *Baldock* (1950), 94 SOL. J. 302 (C.A.) (see also 94 SOL. J. 265). These decisions concerned controlled tenancies, and the question whether the qualification "whose contractual tenancy has come to an end" was a vital one was gone into in *Foster* v. *Robinson* (1950), 94 SOL. J. 474 (C.A.).

The defendant in that case, a claim for possession, was the daughter of a farm worker who had died intestate and who had occupied the cottage claimed. His occupation had begun in or about 1919, when the plaintiff, who employed him, had let him the cottage on a yearly tenancy, which was

controlled. A yearly tenancy is, of course, somewhat unusual in such circumstances, and there was no evidence about when the year began, but the fact that he paid rent half-yearly was pretty well conclusive of the nature of the habendum. In 1946 he gave up working, and soon after that the plaintiff and he agreed that he should occupy the cottage rent-free for the rest of his life. The defendant lived with him throughout. In the action, she relied on the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*); that is to say, she alleged and contended that she was a tenant because she was a member of the family of a tenant dying intestate, who had resided with him at the time of his death, and who also fulfilled the six months' qualification added by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 13. To which the plaintiff answered that the yearly tenancy had been surrendered by operation of law so that after the 1946 agreement the defendant's father had not been a tenant at all but a licensee, or, if a tenant, not a tenant under a tenancy to which the Acts applied: s. 12 (7) of the 1920 Act excludes tenancies at less than two-thirds of the rateable value.

The first question, whether what had happened had effected a surrender by operation of law, apart from the Rent Acts, was answered by reference to *Metcalfe* v. *Boyce* [1927] 1 K.B. 758. That was an action for possession brought by a chief constable against a retired member of his force, who had undoubtedly been tenant of the house claimed till a date in 1912. A new system had then been adopted by which the chief constable was to be tenant of all houses occupied by policemen not living in barracks and, without any notice to quit having been given either by the defendant to his landlord or vice versa, the defendant thenceforth, instead of paying demands for rent addressed to himself and then collecting a grant, took rent demands sent to himself but addressed to the county authority to the police office, received the money and paid the rent; and sent receipts, which were made out to the county authority, to the county treasurer. Though his name remained on the landlord's books as tenant, it was held that his tenancy had been surrendered by the grant of a new tenancy to the plaintiff with his assent. An argument that there could be no surrender if the tenant remained in possession was rejected, surrender by operation of law being considered essentially a manifestation of the law of estoppel.

Analysing the situation in *Foster* v. *Robinson*, Sir Raymond Evershed, M.R., held that by his conduct in not paying rent after the 1946 agreement the deceased ex-tenant had asserted a new arrangement and one which could not co-exist with the old tenancy, and that the new arrangement amounted either to a licence for life or a tenancy at will plus a promise not to determine it. The learned Master of the Rolls preferred the former interpretation (and the latter strikes one as self-contradictory); but in either case the result was that when the defendant's father died he was not the tenant of a dwelling-house to which the Rent Acts applied.

But then came the question whether the 1946 agreement was not an attempt to contract out of those Acts. It was suggested that it was on a par with an agreement made between the grantee of a seven-year lease under seal, controlled by the Acts, who in the fifth year acceded to his landlord's request to enter into a new deed reciting the surrender of the residue of the term and granting a new ninety-nine year lease at a peppercorn rent (in consideration, one assumes, of a substantial premium). This argument left the court cold; the learned Master of the Rolls did not think that it was, in fact, one prohibited by the Rent Acts, but neither did he consider the analogy a sound one. The tenant in the case before him had exchanged a tenancy under which his daughter would have benefited if it were not determined and possession recovered, possibly on the alternative accommodation ground, but under which he paid rent while it lasted, for a right to spend his life and die in the cottage without paying rent any more.

But the defendant's counsel had another argument which was perhaps better calculated to make the judicial flesh creep. A decision against him would, it was urged, open the door to wholesale evasion if the principle enunciated in *Brown* v. *Draper* were not applied to contractual tenancies. Wily landlords would graciously reduce rents to less than two-thirds of rateable value, and then determine the tenancies as and when they thought fit.

There was an occasion, I am told, when in the course of an (industrial) accident case brought by an Irish labourer, his counsel, who happened to be also his compatriot, was asked by the court whether his client was not familiar with the maxim "*volenti non fit injuria*." The answer given was: "My lord, in the part of Cork where he comes from, they talk of nothing else." Be that as it may, one has to admit that the standard of erudition prevalent among tenants of controlled properties in this country is not such as to make many of them familiar with Laocoon's "*Timeo Danaos et dona ferentes*" (Virgil, Aeneid, II, 48), and that they might think of a Trojan horse as likely to prove as much a source of profit as one of the French variety.

But this argument shared the same fate. The Court of Appeal was confident that county court judges would be able to detect stratagems of that kind; and such an agreement as the one before them, made in the best interests of the occupier of the house, should be enforced. In effect, this means that sham surrenders will have to be distinguished from genuine ones just as sham leases have been distinguished from genuine ones. Before the Landlord and Tenant (Rent Control) Act, 1949, made reduction of new control standard rents possible, a Divisional Court described a lease in *Conqueror Property Trust, Ltd.* v. *Barnes Corporation* [1944] K.B. 96, the lessees being an associated company of the lessors and there being no evidence that the flat concerned had been occupied, as "a fictitious document executed merely for the purpose of being paraded as a document establishing a standard rent" and held that it had not that effect. It may not always be so easy to decide what motives actuated parties to a surrender.

One other point calls for comment. Some of the language used by the learned Master of the Rolls suggests that he was not disposed to accept the contention, if relevant, that possession had not been given up by the defendant's father. "If the key had been handed over and then been handed back the next minute that would have symbolised the delivery up and the grant of possession and I cannot think that it vitally matters that that performance was not gone through." It should be noted that this passage deals with the requisites of a surrender at common law, and is not in any way a gloss on the judgment delivered in *Brown* v. *Draper*, mentioned in my opening paragraph. It appears from that decision and the two others cited with it that if the tenant left as much as a few sticks of furniture on the premises the statutory tenancy would not determine without an order of court made on one of the recognised grounds. Lord Greene's "giving up possession" must be taken to mean vacant possession, something more than the "actual possession" which once, under the Rent, etc., Restrictions Act, 1923, s. 2 (1) and (3), effected decontrol, and which could be satisfied by a deliberate handing over of keys or by leaving them in the letter-box of the landlord's agent.

R. B.

HERE AND THERE

SUMMER PEACE

As we travel deeper into the Long Vacation (or should it, abbreviated and shorn of its tail, just be called the Summer Vacation ?) " hard news " in the legal world reaches vanishing point. Stillness and the cats will keep possession of the deserted Law Courts. The attendants at the doors will while away the listless hours explaining to awed and reverent tourists the finer technical points of the pictures and statuary in the Central Hall or escorting the more favoured of the dollar bringers into the less frequented depths beneath the Lord Chief Justice's Court to peer at those peculiar little wooden cells for appellants in waiting on the way to the Court of Criminal Appeal. Not even the gentle lapping of the receding tide of the Divorce Court lists will break the stillness, since for the first time in ten summers no divorce cases will be tried during the recess, though doubtless in some remote corner the practised ear will be able to catch the harsh sound of the filing of petitions. So expeditiously have the once formidable divorce lists been handled that fewer unheard suits remain than have been left over since the outbreak of the late war, the rate of hearing having overtaken and passed the rate of setting down. Of course, though calm and deep peace may reign in the temple of contentious Themis, the wheels go on turning in solicitors' offices, for the grist that comes to their mill must be ground summer and winter, while in the Inns of Court the industrious apprentices at law wait hopefully for opportunity to knock at the door. Not that even the intervening miles between the Temple and the country or seaside retreats of their better established brethren constitute an insurmountable obstacle to the dispatch of paper work. Indeed Lord Davey, when at the junior Bar, is said to have observed that his home-produced opinions were better than his chambers productions, for at home he was untrammelled by authority.

WHO GOES HOME ?

LEISURE breeds speculation and gossip and, of course, there is the usual crop of rumours of impending resignations and replacements, based on no one quite knows what. In the *otium cum dignitate* stakes, Bucknill, L.J., appears to lead in the Court of Appeal and Humphreys, J., in the King's Bench Division. As regards the former, the students of judicial form doubtless have their eye on the fact that this year he completes the fifteen years which represent a normal judicial career, while his next birthday will bring him across the line of three score and ten when human kind are supposed to reach the turning point at which they may properly look back rather than forward. Neither of these tests would have availed the prophets much in the case of Humphreys, J., eighty-three years of age this month and twenty-two years a judge last February. Judging is so much in his bones that there seems no particular reason why he should ever retire. Yet if you would consider the comings and goings that his life has witnessed, consider that he who now sits so firmly on the Bench in his youth sat no less firmly on the precarious eminence of a " penny-farthing " bicycle. Who would succeed Bucknill, L.J., should he resign ? As he himself was a P.D. and A. Division appointment the prophets point to the senior judge there, Hodson, J., for his pre- and post-judicial experience of divorce law or maybe Pilcher, J., as an Admiralty specialist. As to the candidates for a rise from silk to ermine, we are mute of discretion. Barry and Donovan, JJ., leaping the gulf before the recess, have cleared the ground for future guesswork. Incidentally the latter, leading the life at once solitary and hunted of a Vacation Judge confined to London, when otherwise August might have seen him over the seas and far away, must wish that his appointment could have come at some other season than it did.

CANINE BACHELOR CLUBS

IF you were thinking of having a nice cosy summer holiday in Sark with the missis, the kiddies and the little brown dog, make sure of the sex of the last member of the party before you allow it to apply for a passport. In case you missed the recent news item, you may be interested to learn that under a Charter of Queen Elizabeth only the Seigneur is allowed to keep a bitch on the island. So the dogs (if any) of the other 500-odd inhabitants presumably form one large bachelor club or compulsory monastic community, for the one exclusive lady of their kind—their only girl in the world—is doubtless protected from their rude advances by laws as stringent as those of the Vestal Virgins. Maybe occasionally they can, with their owner's connivance, slip across the water to the bright lights and seductive pleasures of Guernsey, for every dog must have his day. The law suddenly came to public notice when Jip, an Irish terrier who for two years had been innocently living the life of an illegal immigrant, was offered the choice between death or exile. She chose death.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Solicitors' Remuneration

Sir,—I welcome the letter from Mr. L. C. Bullock, in your issue of 5th August, and concur in everything he says. He has not, however, I think, sufficiently emphasised the urgent need for entirely revising the basis of Sched. II, nor has he indicated the necessity for an increase in solicitors' costs in contentious matters.

One thing more—solicitors' remuneration is, as the resolution at The Law Society's meeting shows, a matter of paramount importance to the profession, but the Council could not find room in the August issue of the *Law Society's Gazette* for an account of the proceedings, still less for even a tiny reference to the question of remuneration. We are merely told this is " postponed " until the September issue. *Verb. sap.*

MONTIE P. ARNOLD.

London, W.C.2.

Fixed Costs

Sir,—I would refer you to the article on " Fixed Costs " by " J.L.R.R." in your issue of the 1st ultimo, and to the somewhat misleading statement therein to the effect that if less than £20 is recovered then no costs will be awarded in the case of judgment being obtained in default, and that this will apply even if the amount of the claim endorsed on the writ exceeds £20, but is reduced below that amount by the payment of a sum on account.

The position in the above circumstances of a payment by the defendant after issue of writ and judgment entered for less than £20, or for costs only, is that *ex parte* application is made for the judgment to be marked " Allow scale costs." If your contributor's version were correct, a defendant, on being sued for £1,000, could pay to the plaintiff £980 0s. 1d. and escape liability for the writ costs.

" MANAGING CLERK."

Manchester, 2.

[The position explained in the article where judgment is signed for less than £20 is that which arises from the Supreme Court Rules. In suitable cases a master *may* order the defendant to pay the costs of the writ and judgment, in which case the scale costs appropriate to a judgment for between £20 and £40 will apply ; but costs do not follow as a matter of course where the amount claimed is reduced to below £20 by a payment before judgment is signed ; nor will the application to the master be successful unless it can be shown that the circumstances of the case warrant it.—J.L.R.R.]

NOTES OF CASES

COURT OF APPEAL

JURISDICTION: APPLICATION FOR REHEARING

Prince *v.* Prince

Evershed, M.R., Tucker and Bucknill, L.JJ. 26th June, 1950

Appeal from the Divorce Divisional Court ((1949), 93 SOL. J. 804).

The appellant husband's petition for divorce, alleging adultery, was dismissed. The respondent, his wife, was granted a decree *nisi* on her cross-charge of cruelty. Her defence to the allegation of adultery was positive evidence of an exculpatory character as well as a mere denial. In particular, she relied on her statement that, on the occasion when she was said to have been harbouring the co-respondent in the house, a Mrs. Jones was in the house minding the children. Mrs. Jones was not, however, called as a witness, but she was traced, after the trial, by the husband's solicitor, who obtained from her a sworn statement to the effect that the wife had admitted her association with the co-respondent, and that she (the witness) could not have been in the house at the material time. By r. 36 (1) of the Matrimonial Causes Rules the husband was entitled to a rehearing before the Divisional Court if "no error of the court at the hearing is alleged." Otherwise (r. 36 (2)) his remedy was in the Court of Appeal. His application for rehearing under r. 36 (1) was refused by the Divisional Court on the ground of lack of jurisdiction, the case being one, it held, for appeal to the Court of Appeal. The husband appealed. (*Cur. adv. vult.*)

EVERSHED, M.R., reading the judgment of the court, said that, on the question whether r. 36 applied, the test whether the suit was defended or undefended was not conclusive. For instance, a petitioner in an undefended suit, whose petition had been dismissed, could appeal to the Court of Appeal for leave to call fresh evidence. There was a real difference between the case where the judge, having evidence before him, had (erroneously) failed to accept it or to draw the right inference from it, and the case where the judge, because the evidence had been unchallenged and could not be tested, had in effect no option but to accept it. The distinction corresponded with the presence or absence of jurisdiction in the Court of Appeal. In the former case the unsuccessful party alleged (as in the latter he did not) error in the court. In that case the Divisional Court would not have jurisdiction under r. 36 because the Court of Appeal had it and because error in a limited sense at least was alleged. The question was whether the decision of the Divisional Court in *Petty* v. *Petty* [1943] P. 101, imposed too strict a limit on the jurisdiction of that court or whether it could be extended, without trespassing beyond the bounds which Lord Merriman, P., had in the present case pointed out must necessarily be imposed at some point to avoid an overlap of jurisdiction between that court and the Court of Appeal. In this case the application for a rehearing did trespass on the jurisdiction of the Court of Appeal because the husband could have appealed to the Court of Appeal on the ground that the decision was against the weight of evidence, and he could also have applied for leave to call before the Court of Appeal further evidence. It followed that error of the court was necessarily alleged and the appeal should be dismissed. It seemed to them, having regard to the previous history of r. 36, that it was intended, or ought to be treated as having been intended, to give or preserve to a Divisional Court (because of the peculiar public concern in matrimonial matters) the right to order a new trial in cases in which the parties themselves would not, in the ordinary course, be entitled to go to the Court of Appeal. If that view were right, it appeared to them that by the phrase "no error of the court at the hearing is alleged" it was intended to exclude all cases in which an aggrieved party might seek upon application according to the ordinary general procedure of the Court of Appeal to challenge as erroneous the conclusion of the judge below. Appeal dismissed.

APPEARANCES: *G. H. Crispin* and *Stuckey* (*Chamberlain and Co.*, for *Stanley Williams & Elsby*, Liverpool); *R. H. Forrest* and *J. J. Clarke* (*Jaques & Co.*, for *T. R. Jones & Co.*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVORCE: STANDARD OF PROOF

Bater *v.* Bater

Bucknill, Somervell and Denning, L.JJ. 29th June, 1950

Appeal from Mr. Commissioner Grazebrook, K.C.

The appellant wife's petition for divorce on the ground of cruelty was dismissed by the commissioner, who said, in his judgment: "That is the evidence, and in order to succeed the wife has to satisfy me that there has been injury to life, limb or health, bodily or mentally, or reasonable apprehension of it, and she has to prove her case beyond reasonable doubt." It was argued for the wife on this appeal that in the last sentence of that statement the commissioner had misdirected himself.

BUCKNILL, L.J., said that in his opinion the statement that the wife had to prove her case beyond reasonable doubt was a correct statement of law. He adhered to what he had said in *Gower* v. *Gower* (1950), *ante* p. 193; 66 T.L.R. (Pt. 1) 717, and *Davis* v. *Davis* [1950] P. 125; *ante* p. 81, though in the former case he ought perhaps to have said: "The standard of proof required in a criminal case is higher than required in *some* civil actions." He did not understand how a court could be satisfied that a charge had been proved (and the statute required that the court should be satisfied before pronouncing a decree), if, at the end of the case, it had a reasonable doubt in its mind whether the case had been proved. To be satisfied and at the same time to have a reasonable doubt seemed to him to be an impossible state of mind. He regarded proceedings for divorce as of very great importance not only to the parties, but also to the State. If a wife were divorced she might lose the maintenance to which she would otherwise have been entitled from her husband, and she might lose the custody of her children. It might indeed mean ruin to her. If a high standard of proof were required because of the importance of a case to the parties and also to the community, divorce proceedings were the kind of case which required that high standard.

SOMERVELL, L.J., agreed.

DENNING, L.J., also agreeing, said that in criminal cases the charge must be proved beyond reasonable doubt; but there might be degrees of proof within that standard. In civil cases, too, the case might be proved by a preponderance of probability, but there might be degrees of probability within that standard. The degree depended on the subject-matter. A civil court, when considering a charge of fraud, would naturally require for itself a higher degree of probability than that required when asking if negligence were established. It did not adopt so high a degree as a criminal court, even when considering a charge of a criminal nature; but still it did require a degree of probability which was commensurate with the occasion. Likewise, a divorce court should require a degree of probability which was proportionate to the subject-matter. Because of our high regard for the liberty of the individual, a doubt might be regarded as reasonable in the criminal courts which would not be so in the civil courts. He therefore agreed that the use of the expression "reasonable doubt" by the commissioner was not a misdirection. If, however, the commissioner had put the case higher and said that the case had to be proved with the same strictness as a crime was proved in a criminal court, then he would have misdirected himself, for that would have been the very error which this Court of Appeal had corrected

in *Davis* v. *Davis, supra;* it would be adopting too high a standard. The divorce court was a civil court, not a criminal court, and it should not adopt the rules and standards of the criminal court. Appeal dismissed.

APPEARANCES: *D. Tolstoy* (*Neave & Neave*, for *Broad, Riggall & Godman*, Watford).

[Reported by R. C. CALBURN, Esq., Barrister at-Law.]

SUPERANNUATION FUND: "LOCAL AUTHORITY CONCERNED"

Walter *v.* Eton Rural District Council and Others

Tucker, Cohen and Asquith, L.JJ. 19th July, 1950

Appeal from Lord Goddard, C.J. (*ante* p. 304).

The defendant rural district council were of opinion that the plaintiff, an employee of theirs, was entitled to a superannuation allowance on his retirement through ill-health. The defendants, Buckinghamshire County Council, thought otherwise. The plaintiff's appeal to the Minister of Health was dismissed. He therefore brought this action for a declaration that he was entitled to an annual superannuation allowance under the Local Government Superannuation Act, 1937. By s. 35 of that Act, "Any question concerning the rights or liabilities of an employee of a local authority . . . shall be decided in the first instance by the authority concerned, and, if the employee is dissatisfied with any such decision or with the authority's failure to come to a decision, shall be determined by the Minister, and the Minister's determination shall be final." Lord Goddard, C.J., held that the county council were the "authority concerned" referred to in s. 35; that it was for them to decide on the plaintiff's claim, subject to appeal to the Minister, and that the action therefore failed. The plaintiff now appealed.

TUCKER, L.J., said that it was argued for the plaintiff that a question of incapacity through illness must be better determined by the employing authority who were familiar with the individual than by a distant authority who did not know him. There was much to be said for that view. On the other hand, it was argued that the county council were not merely in the position of a banker who was bound to pay out money on the direction of the employing authority, but were in the position of a trustee and must be satisfied that a payment out was justified. The matter was by no means free from difficulty, but, on consideration of the relevant sections of the Act, he had come to the conclusion that the county council's contention was right. The appeal would therefore be dismissed.

COHEN and ASQUITH, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Gerald Gardiner*, K.C., and *M. Lyell* (*Timothy Hales*); *Michael Rowe*, K.C., and *W. L. Roots* (*Pyke, Franklin & Gould*, for *Guy Crouch*, Aylesbury). The defendant rural district council were not represented on the appeal.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHARTERPARTY: DANGEROUS CARGO

Chandris *v.* Isbrandtsen-Moller Co.

Tucker, Cohen and Asquith, L.JJ. 20th July, 1950

Appeal from Devlin, J. (*ante*, p. 303).

A charterparty made between a shipowner, whose personal representative the plaintiff was, and the defendant charterers excluded the carriage of cargo consisting of "acids, explosives, arms, ammunition or other dangerous cargo." It incorporated s. 4 (6) of the U.S.A. Carriage of Goods by Sea Act, 1936, whereby if goods of an inflammable nature, loaded with the knowledge of the master, become a danger they may be landed at any place by the carrier. Turpentine was loaded in the chartered vessel in America with the knowledge of the master and as part of a general cargo. While she was being unloaded at Liverpool the port authorities, because of the turpentine, ordered the vessel to move out of dock and unload into craft in the Mersey, the stipulated lay days being exceeded by an extra sixteen days through the resultant delay. The plaintiff claimed demurrage, damages for detention of the vessel at Liverpool, and interest. Devlin, J., in a reserved judgment on questions left by an arbitrator, awarded the shipowner a sum by way of demurrage but, following *Podar Trading Co., Ltd., Bombay* v. *François Tagher, Barcelona* [1949] 2 K.B. 277, held that the arbitrator had no power to award interest on the sum adjudged to be due. The shipowner appealed, the question of interest being the only matter raised, so that the appeal was really against the decision of the Divisional Court above cited.

TUCKER, L.J., said that it was common ground that interest would not have been recoverable at common law, but it was argued for the shipowner that it would have been recoverable under the Civil Procedure Act, 1833. By that Act the right of awarding interest was given to the jury if they thought fit. In 1851, *Edwards* v. *Great Western Railway*, 11 C.B. 588, decided that an arbitrator could award interest under the Act of 1833, although the Act itself only gave the power to a jury. That decision stood from 1851 until the Law Reform Act of 1934. By s. 3 of that Act: "in any proceedings tried in any court of record for the recovery of any debt or damages the court may if it thinks fit order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit . . ." So far as the power of an arbitrator to award interest was dependent on the Act of 1833, it was plainly revoked when the sections of that Act were repealed by the Act of 1934. It was contended for the charterers that, as the Act of 1934 was silent as to arbitrations, they must be taken to be excluded. It was contended for the shipowner that an arbitrator did not derive his power from the Act at all, but from the submission of the parties, which left it to him to determine the matters submitted in accordance with the existing law of the land. He (his lordship) thought that contention right. He could not see any difference between the duty of an arbitrator to give effect to, say, the Limitation Act, and the jurisdiction of an arbitrator to award interest, which was in fact only part of the damages recoverable. He therefore thought that arbitrators had power to award interest, and the appeal would be allowed.

COHEN and ASQUITH, L.JJ., agreed. Appeal allowed.

APPEARANCES: *A. A. Mocatta* and *Michael Holman* (*Holman, Fenwick & Willan*); *A. W. Roskill*, K.C., and *G. N. W. Boyes* (*Lightbounds, Jones & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHARTERPARTY: "FULL REACH AND BURTHEN": READINESS TO LOAD

Noemijulia Steamship Co., Ltd. *v.* Minister of Food

Tucker, Cohen and Asquith, L.JJ. 24th July, 1950

Appeal from Devlin, J. (*ante*, p. 353).

By a charterparty a steamship was required to go to certain Argentine ports and there load a cargo of grain in bags or bulk. Clause 17 stipulated that the cargo was to be brought to and taken from alongside at charterer's risk and expense, and cl. 12 gave him the option of cancelling the charter if the steamer should not be ready to load at the first loading port by 6 p.m. on 27th December, 1948. By cl. 6: "The charterers are to have the full reach and burthen of the steamer including 'tween and shelter decks . . . etc. (provided same are not occupied by bunker coals and/or stores)." By cl. 19: "Owners undertake that the steamer shall not load more than 7,350 tons, and not less than 6,650 tons English weight . . ." When the vessel, having reached the first loading port, gave notice of readiness to load, the charterer cancelled the charterparty on the ground that she was not ready to load in that (1) there were ten tons of bunker coal in No. 3 lower hold and a few tons in No. 3 'tween deck; and (2) she had no mainmast or after derricks.

The umpire, subject to a special case stated for the opinion of the court, awarded in favour of the charterer. Devlin, J., gave a reserved judgment reversing that decision. The charterer now appealed. (*Cur. adv. vult.*)

TUCKER, L.J., reading his judgment, said that with regard to No. 3 lower hold the question turned on the proper construction of cl. 6 of the charterparty. He agreed with the construction placed on it by Devlin, J. The word "including" was intended to embrace the enumerated spaces which followed the expression "full reach and burthen." If the word "same" covered both the full reach and burthen and the enumerated spaces, No. 3 lower hold was clearly covered by the proviso; if it was intended to refer only to the enumerated spaces, then that hold was still covered by the expression "&c." He who sought to enforce a forfeiture clause, which in effect this was, must prove strictly all the matters on which he relied, and the charterer here had failed to show that the use of that hold as a reserve bunker was not reasonably required for the whole voyage. On that part of the case therefore the appeal must fail. The question of gear was more difficult. The gear which was not available would only have been required if the vessel had not been able to obtain a berth in port below the bar to complete her cargo and had been compelled to load there from lighters. The rule as to readiness to load applicable to cargo space ought not to be applied so stringently to gear required for loading. The cargo space was, but the loading gear was not, placed at the disposal of the charterer. Provided that the shipowners were able when required to load any cargo which the charterer was entitled to tender to them, it was for them to decide by what means they would carry out their obligations. So far as equipment was concerned, there was no duty on the shipowners to be ready from the outset to deal with any kind of cargo which the charterer was entitled under the charterparty to call on them to take on board. A charterer who cancelled on the ground of unreadiness to load must at least prove that at the cancelling date the shipowners would necessarily be unable to load some cargo which the charterer was entitled to call on them to take on board; it was not enough to show at the cancelling date that the shipowners might be unable to load some particular cargo: it must be shown that they could not. In the present case there was nothing in the facts found by the arbitrator to indicate that the shipowners could not have devised some temporary equipment to take bags on board from lighters in the unlikely event of their being required to load in that manner. The appeal would, therefore, be dismissed.

COHEN and ASQUITH, L.JJ., agreed. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *Scott Cairns*, K.C., and *A. A. Mocatta* (*Treasury Solicitor*); *Sir Robert Aske*, K.C., and *E. W. Roskill* (*Holman, Fenwick & Willan*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

PROFITS TAX: "CONTROLLING INTEREST"

Inland Revenue Commissioners *v.* Silverts, Ltd.

Romer, J. 13th June, 1950

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

In 1940, there were four directors of the respondent company. The share capital (in shares of £1) was held as to 6,000 B shares by director No. 1, and as to 3,500 and 2,500 A shares by Nos. 2 and 3 respectively, as trustees for a beneficiary. By a deed made in June, 1940, between the beneficiary as settlor, a bank as custodian trustee, and directors Nos. 2 and 3 as managing trustees, the A shares were transferred into the name of the bank as custodian trustee with the functions and powers given by s. 4 of the Public Trustee Act, 1906. It was further provided that the trustees should stand possessed of the shares in trust for the son of the settlor. By s. 4 of the Act of 1904, the custodian trustee is to "concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them." The special commissioners held that in those circumstances the directors of the company did not have a controlling interest in the company within the meaning of para. 11 of Sched. IV to the Finance Act, 1937, and that accordingly the company was not subject to the restrictions imposed by that paragraph on the treating of the remuneration of the directors as a deduction for the purpose of arriving at its taxable profits. The Crown appealed. (*Cur. adv. vult.*)

ROMER, J., reading his judgment, said that the question was whether the control attached to the trust holding should be regarded as vested in the managing trustees or in the bank. The Crown contended that the bank was a bare trustee, bound to comply with the directions of directors Nos. 2 and 3, who thus had effective control. The company contended that in view of the Act of 1906, the bank could not be considered as a bare trustee, and, further, that it was not legitimate to go behind the company's register. *British-American Tobacco Co., Ltd.* v. *I.R.C.* [1943] A.C. 335; 87 SOL. J. 7, appeared at first sight to be conclusive of the present case; but the special commissioners, relying on *I.R.C.* v. *Bibby (J.) & Sons, Ltd.* (1945), 29 T.C. 167; 89 SOL. J. 258, had held otherwise. That case concerned the meaning of the expression "controlling interest" in s. 13 (9) of the Finance (No. 2) Act, 1939, the question being whether shares held by three directors as trustees of a marriage settlement should be taken into account. There it was to the advantage of the company to prove that it was "controlled" by the directors. On that case, the respondent company contended that to ascertain whether the directors had a controlling interest, the court must look at the share register alone; and, secondly, that the suggestion of Lord Greene, M.R., in the *Bibby* case, *supra*, that a "bare trustee" might be an exception, had found no support in the House of Lords. Further, it was argued that a custodian trustee, whose functions were prescribed by the Act of 1906, was not such a "bare trustee" as was contemplated by Lord Greene, M.R. There was force in that argument, but it seemed that, on the whole, the bank was a "bare trustee" as so contemplated; if so, it was *a fortiori* the mere vehicle for the managing trustees' wishes for the purposes envisaged in the *British-American Tobacco* case, *supra*, and that case, rather than the *Bibby* case, *supra*, governed the present appeal. It was the managing trustees who could make "the ultimate decision" in Lord Simon's words in the *British-American Tobacco* case, *supra*. It followed that the trust control vested in the managing trustees, and, accordingly, that the company was one in which, for the purposes of the Finance Act, 1937, the directors had a controlling interest. Appeal allowed.

APPEARANCES: *T. Donovan*, K.C., *J. H. Stamp* and *R. P. Hills* (*Solicitor of Inland Revenue*); *J. Pennycuick*, K.C., and *G. G. Honeyman* (*Clifford-Turner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

FACTORY: SLIPPERY PASSAGE LEADING TO CANTEEN

Davies *v.* De Havilland Aircraft Co., Ltd.

Somervell, L.J. (sitting as an additional judge) 6th July, 1950

Action.

The plaintiff was employed by the defendant company. While he was walking down a passage leading to the canteen he slipped on a patch of greasy substance, fell and suffered injury. In this action, in which he claimed damages for personal injuries, he alleged negligence and breach of statutory

duty by the employers in failing to maintain the floor of the passage properly by causing or permitting oil and grease to be there, contrary to s. 25 (1) of the Factories Act, 1937. By that subsection: "All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained." By s. 26 (1): "There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work."

SOMERVELL, L.J., said that in his opinion s. 26 (1) did not fit the circumstances of the case. As the passage was a means of access to the canteen and not a means of access to a place at which a person had to work, it would be outside that subsection whether the employee was going to the canteen or coming from it. It was s. 25 (1) which was intended to cover a passage of this kind; but, even assuming a slippery patch of water or an unexplained patch of oil, he did not consider that the subsection applied here. The fact that for an uncertain period and in circumstances which nobody could explain there was a patch of oil on the floor did not amount to a breach of the duty of maintaining as defined in the definition section of the Act of 1937. Equally, on the assumption that there was a slight depression in the concrete where, after rain, there was a patch of water which made the surface slippery, there was no breach of the subsection. It would be quite impracticable to maintain passages and roads and pathways so that there was never a slippery place on which, especially after rain, a man might fall. Nor was there any breach of duty at common law. The relevant duty was stated by Lord Herschell in *Smith* v. *Baker and Sons* [1891] A.C. 325, at p. 362. It could not be said that the mere existence of the slippery mixture, which he (his lordship) had found might have resulted in the plaintiff's fall, indicated any failure by the employers to take reasonable care to protect those employed by them from unnecessary risk. Judgment for the defendants.

APPEARANCES: *R. M. Everett* (*Rowley, Ashworth & Co.*); *John Thompson* (*Clifford-Turner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

"FACTORY": CHEMIST'S SHOP

Joyce *v.* Boots Cash Chemists (Southern), Ltd.

Slade, J. 13th July, 1950

Action.

The plaintiff was employed as a porter at a branch shop of the defendant company. While carrying a box of medicines upstairs he tripped on an edge of linoleum, fell and suffered injury in respect of which he brought this action. He contended that the premises were a factory within the meaning of the Factories Act, 1937; that consequently by s. 25 (1) of the Act it was the duty of the defendants to ensure that all floors, steps and stairs were of sound construction and properly maintained, and by subs. (2) to ensure that a substantial hand-rail was provided for every staircase; that by s. 26 (1) it was the defendants' duty to provide a safe means of access to every place at which the plaintiff had to work; and, in the alternative, that the defendants were liable for negligence at common law.

SLADE, J., said that the effect of the definition of a factory in s. 151 of the Factories Act, 1937, was that any premises were a factory for the purposes of the Act in which persons were employed in manual labour on any process for, or incidental to, any of the purposes specified in paras. (*a*), (*b*) or (*c*) of s. 151 (1). For premises to be a factory they must fall within both limbs of the definition; that is, (1) there must be persons employed in manual labour in some process, and (2) that process must be for or incidental to one or more of the purposes specified in (*a*), (*b*) or (*c*). As for the second limb, (*a*) was the making of any article or part of any article, and (*c*) was the adapting for sale of any article. The plaintiff contended that the making of pills and ointments and the dispensing of prescriptions, which were admitted activities of the shop, constituted the making of an article or the adapting of an article for sale. Assuming without deciding that the processes mentioned in (*a*) or (*c*), or both, were carried out at the premises, those premises would become a factory; but only if persons were employed there in manual labour on any process or incidental to any of the processes that he had assumed to exist. By the Interpretation Act, 1889, "persons" included "person." There was authority for saying that "process" in the section meant "activity." That left the words "manual labour" to be construed. At this shop three shop assistants and a dispenser were employed in addition to the plaintiff. In his view the shop assistants and the dispenser were not employed in manual labour, but the plaintiff was. It might, therefore, appear that the shop fell within the definition of a factory, because it was premises in which one person was employed in manual labour in some activity incidental to one of the purposes referred to in the section. Nevertheless, it seemed to him almost fantastic to say that, merely because the plaintiff was employed as a porter at this chemist's shop, it became a factory and that it would cease to be a factory the moment the plaintiff left. He thought that some limitation must be placed on the definition, and the question was whether the premises were only used incidentally for the purposes of manual labour, or whether that was the substantial purpose for which they were used. He had no hesitation in saying that manual labour, confined, as he found it to be, to the plaintiff as being the only member of the staff so employed, was only an incidental purpose to the purpose for which the premises were used, and that consequently they were not a factory within the meaning of the Act of 1937. Should he be wrong in so deciding, he held that there had been no contravention of s. 25 (1) or s. 26 (1), but that under s. 25 (2) the plaintiff would have been entitled to damages, because no hand-rail was provided, if that contravention had caused the accident. There had been no negligence at common law. Judgment for the defendants.

APPEARANCES: *J. G. K. Sheldon* (*Shaen, Roscoe & Co.*); *R. M. Everett* and *Tudor Evans* (*Seaton Taylor & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

PROBATE: BENEFICIARY ALLEGEDLY TOO YOUNG AS ADMINISTRATOR

In the Estate of Edwards-Taylor, deceased

Willmer, J. 28th June, 1950

Probate motion.

The applicants, members of a family, applied for a grant *ad colligenda bona* with the will of the deceased annexed, with power, among others, to make a sufficient allowance out of the estate to the deceased's daughter, the respondent. The deceased had by her will left her daughter, whom the executors had predeceased, a large sum of money. The application was made on the ground that the daughter, who had just reached the age of twenty-one years, was not at present fitted to be placed in free control of a large fortune.

WILLMER, J., said that he would assume that it would be in the best interests of the daughter that her fortune should be controlled for the time being. It was contended for the applicants that s. 162 of the Judicature Act, 1925, as amended by s. 9 of the Administration of Justice Act, 1928, gave the court a discretion to make an order of the nature sought. It had been found impossible to cite any case in which a similar order had been made where the sole ground for interfering was the fact that the court in its wisdom thought it undesirable that a particular person should have the full enjoyment of the estate in question. In his opinion, the words "insolvency of the estate or any other special circumstances" in s. 162 referred only to special circumstances relating to the estate itself, or to the administration of the estate. The daughter complained that the applicants were

seeking to use the machinery of the section, which was designed solely for the question of administration, for the ulterior purpose of controlling the disposition of the daughter's estate and inhibiting her from dealing with her own property as she wished. Whatever its merits, if the court were to accede to the application it would be setting a new precedent —using s. 162 for a new purpose; and it might very well be found that the court was striking the first blow to drive in the thin end of a very large wedge. It was difficult to see where such a precedent might lead if it were once admitted that the section could be used for the ulterior purpose of interfering, by order of the court, with a beneficiary's enjoyment of an estate to which he was by law entitled. Application refused.

APPEARANCES: *Charles Russell*, K.C., and *William Latey*, K.C. (*Gibson & Weldon*, for *Clough & Son*, Cleckheaton); *Manningham-Buller*, K.C., and *R. T. Barnard* (*Janson, Cobb, Pearson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Birmingham-Great Yarmouth Trunk Road (North Burlingham Division) Order, 1950. (S.I. 1950 No. 1349.)

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 1253.)

British Wool Marketing Scheme (Approval) Order, 1950. (S.I. 1950 No. 1326.)

Civil Defence (Demolition and Repair Services) (Scotland) Regulations, 1950. (S.I. 1950 No. 1298.)

Conditions of Employment and National Arbitration (Amendment) Order, 1950. (S.I. 1950 No. 1309.)

Control of Rams Regulations, 1950. (S.I. 1950 No. 1311.)

Diversion of Highways (Essex) (No. 1) Order, 1950. (S.I. 1950 No. 1335.)

Exeter-Leeds Trunk Road (Gloucester Eastern By-Pass) (Revocation) Order, 1950. (S.I. 1950 No. 1350.)

Flour (Amendment No. 3) Order, 1950. (S.I. 1950 No. 1313.)

Gloves (Manufacture and Supply) Order, 1950. (S.I. 1950 No. 1282.)

Grassland Fertilisers Scheme, 1950. (S.I. 1950 No. 1320.)

Hill Rams (Revocation of Control) Order, 1950. (S.I. 1950 No. 1312.)

Housing (Rate of Interest) Regulations, 1950. (S.I. 1950 No. 1318.)

Import Duties (Exemptions) (No. 5) Order, 1950. (S.I. 1950 No. 1299.)

Import Duties (Exemptions) (No. 6) Order, 1950. (S.I. 1950 No. 1319.)

Imported Canned Fish (Amendment) Order, 1950. (S.I. 1950 No. 1341.)

Landholders and Cottars (Building Grant) (Scotland) Amendment Regulations, 1950. (S.I. 1950 No. 1304.)

London–Great Yarmouth Trunk Road (Royal Terrace and Parade Road North, Lowestoft) Order, 1950. (S.I. 1950 No. 1314.)

London Traffic (Control of Speed of Traffic) (Blackwall and Rotherhithe Tunnels) Regulations, 1950. (S.I. 1950 No. 1348.)

London Traffic (Prescribed Routes) (No. 12) Regulations, 1950. (S.I. 1950 No. 1344.)

London Traffic (Prescribed Routes) (No. 13) Regulations, 1950. (S.I. 1950 No. 1347.)

London Traffic (Prohibition of Waiting) (London Colney) Regulations, 1950. (S.I. 1950 No. 1343.)

National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 3) Regulations, 1950. (S.I. 1950 No. 1345.)

Newcastle and Gateshead Water Order, 1950. (S.I. 1950 No. 1300.)

Retail Bookselling and Stationery Trades Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 1266.)

Retention of Pipes and Cables under Highways (Buckinghamshire) (No. 2) Order, 1950. (S.I. 1950 No. 1340.)

River Great Ouse Catchment Board (Yaxley Internal Drainage District) Order, 1950. (S.I. 1950 No. 1321.)

River Great Ouse Catchment Board (Yaxley Internal Drainage District) (Appointed Day) Order, 1950. (S.I. 1950 No. 1322.)

River Trent Catchment Board (Variation of Local Acts) Order, 1950. (S.I. 1950 No. 1323.)

River Trent Catchment Board (Variation of Local Acts) Order, 1950. (S.I. 1950 No. 1324.)

Stopping up of Highways (Bedfordshire) (No. 2) Order, 1950. (S.I. 1950 No. 1336.)

Stopping up of Highways (Bristol) (No. 2) Order, 1950. (S.I. 1950 No. 1330.)

Stopping up of Highways (Denbighshire) (No. 1) Order, 1950. (S.I. 1950 No. 1331.)

Stopping up of Highways (Dorset) (No. 1) Order, 1950. (S.I. 1950 No. 1337.)

Stopping up of Highways (East Suffolk) (No. 1) Order, 1950. (S.I. 1950 No. 1316.)

Stopping up of Highways (Flintshire) (No. 1) Order, 1950. (S.I. 1950 No. 1342.)

Stopping up of Highways (Gloucestershire) (No. 3) Order, 1950. (S.I. 1950 No. 1338.)

Stopping up of Highways (Gloucestershire) (No. 4) Order, 1950. (S.I. 1950 No. 1292.)

Stopping up of Highways (London) (No. 7) Order, 1950. (S.I. 1950 No. 1332.)

Stopping up of Highways (Oxfordshire) (No. 1) Order, 1950. (S.I. 1950 No. 1293.)

Stopping up of Highways (Surrey) (No. 1) Order, 1950. (S.I. 1950 No. 1339.)

Stopping up of Highways (Warwickshire) (No. 4) Order, 1950. (S.I. 1950 No' 1333.)

Stopping up of Highways (West Riding of Yorkshire) (No. 2) Order, 1950. (S.I. 1950 No. 1334.)

Sugar Industry (Provision for Research and Education in the Growing of Sugar Beet in Great Britain) Order, 1950. (S.I. 1950 No. 1315.)

Tomato and Cucumber Marketing Scheme (Approval) Order, 1950. (S.I. 1950 No. 1327.)

Utility Cloth and Utility Household Textiles (Maximum Prices) (Amendment No. 10) Order, 1950. (S.I. 1950 No. 1308.)

Utility Mark and Apparel and Textiles (General Provisions) (Amendment No. 7) Order, 1950. (S.I. 1950 No. 1283.)

Wool Textile Industry (Export Promotion Levy) Order, 1950. (S.I. 1950 No. 1303.)

OBITUARY

MR. F. S. BRYAN

Mr. Frank Smith Bryan, retired solicitor, formerly of Nottingham, died at his home at Redhill on 31st July, aged 81. He was admitted in 1891.

MR. T. OERTON

Mr. Thomas Oerton, solicitor, of Bideford, died on 9th August, aged 66. He was admitted in 1908.

MR. J. A. WILLIAMSON

Mr. John Arnot Williamson, solicitor, of Newcastle-on-Tyne, died on 5th August, aged 89. He was admitted in 1884. Two months ago he received the M.B.E. for his work with the Tynemouth Volunteer Lifesaving Brigade.

MR. R. WOOD

Mr. Robert Wood, solicitor, of Saltburn, died recently, aged 69. He was admitted in 1904.

BOOKS RECEIVED

A Handbook on Bankruptcy Law and Practice. By IVAN CRUCHLEY, LL.B., of Gray's Inn and the Midland Circuit, Barrister-at-Law. 1950. pp. xx and (with Index) 208. London: The Solicitors' Law Stationery Society, Ltd. 18s. net.

Current Legal Problems, 1950. Vol. 3. Edited by GEORGE W. KEETON and GEORG SCHWARZENBERGER, on behalf of the Faculty of Laws, University College, London. 1950. pp. vii and (with Index) 305. London: Stevens & Sons, Ltd. 21s. net.

Supplement to Slack on War Damage. Second Edition. By G. GRANVILLE SLACK, B.A., LL.M. (Lond.), of Gray's Inn, Barrister-at-Law, and G. KRIKORIAN, B.A. (Hons.) (Oxon.), of the Middle Temple, Barrister-at-Law. 1950. pp. xx and (with Index) 243. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

The Law of Master and Servant in relation to Industrial and Intellectual Property. By HAROLD G. FOX, M.A., Ph.D., Litt.D., one of His Majesty's Counsel, Lecturer in the Law of Industrial Property in the Faculty of the School of Law of the University of Toronto. 1950. pp. xxviii and (with Index) 153. University of Toronto Press. London: Geoffrey Cumberlege, Oxford University Press. 37s. 6d. net.

Cripps on Compulsory Acquisition of Land. Ninth Edition in Two Volumes. By ANTHONY CRIPPS, M.A., of the Middle Temple, Barrister-at-Law, assisted by B. KEITH-LUCAS, M.A., Senior Lecturer in Local Government, University of Oxford, Solicitor, and S. LLOYD JONES, LL.M., Chief Assistant Solicitor, Nottingham Corporation. 1950. pp. lvi and (with Index) 1919. London: Stevens & Sons, Ltd. £8 8s. net.

Kime's International Law Directory for 1950. Edited and compiled by PHILIP W. T. KIME. 1950. pp. xiv and 492. London: Butterworth & Co. (Publishers), Ltd.; Kime's International Law Directory, Ltd. 15s. net.

Tolley's Income Tax Tables for 1950-51 (9s. rate). Compiled by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FEAVER, A.S.A.A., F.C.I.S. 1950. London: Waterlow & Sons, Ltd. (for Chas. H. Tolley & Co.). 2s. 6d. net.

Petroleum Law. By J. L. THOMAS. 1950. pp. (with Index) 84. London: Police Review Publishing Co., Ltd. 2s. 6d. net.

The Law of Sewers and Drains. By J. F. GARNER, LL.M., Solicitor. 1950. pp. xxx and (with Index) 176. London: Shaw & Sons, Ltd. 25s. net.

Hayward and Wright's Office of Magistrate. Eighth Edition. By JAMES WHITESIDE, Solicitor, Clerk to the Justices for the City and County of the City of Exeter. 1950. pp. 260 and (Index) 39. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 17s. 6d. net.

The Journal of Comparative Legislation and International Law. Third Series. Vol. 32, Pts. 1 and 2. Edited by Sir CECIL T. CARR, K.C.B., K.C., LL.D. 1950. pp. xxxvi and (with Index) 188. London: Society of Comparative Legislation.

Criminal Procedure. Reprinted from "Harris and Wilshere's Criminal Law," Eighteenth Edition. By A. M. WILSHERE, M.A., LL.B., of Gray's Inn, Barrister-at-Law. 1950. pp. xxvi and (with Index) 298. London: Sweet & Maxwell, Ltd. 15s. net.

Planning and Compensation Reports. Pt. 1, July, 1950. Editor: JOHN BURKE, Barrister-at-Law. London: Sweet and Maxwell, Ltd. Subscription: 35s. per volume.

Insolvency Practice. By J. SNAITH, A.S.A.A. 1950. pp. (with Index) 306. London: Gee & Co. (Publishers), Ltd. 25s. net.

Mechanising for Control. By J. H. BURTON, F.S.A.A., F.I.M.T.A., F.R.Econ.S. 1950. pp. (with Index) 95. London: Gee & Co. (Publishers), Ltd. 10s. 6d. net.

NOTES AND NEWS

Professional Announcement

Messrs. WALTERS & WILLIAMS, of 31 Quay Street, Carmarthen, announce that they have taken into partnership Mr. T. L. MORGAN, who has been associated with the firm for some time past.

Honours and Appointments

The Board of Trade have appointed Mr. JOHN LEWIS WILLIAMS to be Assistant Official Receiver for the Bankruptcy District of the County Courts of Cardiff and Barry, Pontypridd, Ystradyfodwg and Porth, Newport (Mon.), Tredegar, Blackwood, Abertillery and Bargoed; the Bankruptcy District of the County Courts of Swansea, Aberdare and Mountain Ash, Bridgend, Merthyr Tydfil, Neath and Port Talbot; and the Bankruptcy District of the County Courts of Carmarthen, Aberystwyth and Haverfordwest.

Mr. W. H. J. BROWNE, clerk to the Newton-le-Willows Urban District Council, has been appointed Town Clerk of Whitehaven.

Mr. E. R. DAVIES, deputy clerk of the Berkshire County Council and deputy Clerk of the Peace for Berkshire since 1935, is to succeed Mr. H. J. C. Neobard, the clerk to the county council and Clerk of the Peace, when he retires on 1st April next year.

The following appointments are announced in the Colonial Legal Service: Mr. A. R. BASTER and Mr. R. BATHURST BROWN, Assistant Commissioners of Lands, Gold Coast, to be Principal Assistant Commissioners of Lands, Gold Coast; Mr. C. F. HENVILLE, Crown Attorney, Leeward Islands, to be Attorney-General, Windward Islands; Mr. H. H. MARSHALL, Assistant Administrator-General, Nigeria, to be Crown Counsel, Nigeria; Mr. L. D. JEFFERIES to be Assistant Registrar-General, Lands and Mines Department, Tanganyika.

Personal Notes

Mr. T. M. N. Bartleet, solicitor, of Plymouth, was married on 8th August to Miss Pamela Joan Hill, of Plymouth.

When Mr. Emrys Simons, solicitor, of Tonyrefail, Glamorgan, rose to open a case at Pontypridd County Court on 9th August, Judge O. Temple-Morris, K.C., congratulated him on his gallant rescue at Newton, Porthcawl, on the previous Sunday, of a seven-year-old boy who was carried out to sea while sitting on a motor car tube.

Miscellaneous

At The Law Society's Final Examination, held on 19th, 20th and 21st June, 297 candidates out of 501 were successful. The Council have awarded the following prizes: to David John Hughes-Morgan, who served his articles with Mr. J. C. P. De Winton, M.A., of Brecon, the Edmund Thomas Child Prize, value about £18; and to Norman Arthur Cox, who served his articles with Mr. J. C. Cox, of Messrs. Harold Kenwright & Cox, of London, the John Mackrell Prize, value about £11.

The Joint Committee of The Law Society and the Solicitors' Managing Clerks' Association announce that the next examination for solicitors' managing clerks will be held in November. The closing date for entries is 1st September. Entry forms can be obtained on application to the Association at Maltravers House, Arundel Street, Strand, London, W.C.2.

Wills and Bequests

Major J. C. O. Dickson, D.F.C., solicitor, of Preston, left £15,907 (£14,773 net). He bequeathed £250 for division among members of the staff of his firm in proportion to their completed years of service since 1st January, 1921.

Mr. G. G. Goodman, solicitor, of Cambridge, left £24,104 (£24,002 net).

Mr. T. N. Grimshaw, solicitor, of Wakefield, left £3,252 (£3,195 net).

Mr. A. E. Leonard, retired solicitor, of Marylebone, left £77,796 (£77,314 net).

"THE SOLICITORS' JOURNAL"

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